IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16406 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUNIL @ BALUM TEJBAHADURSING

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16406 of 2003

MR AR SHAIKH for Petitioner No. 1

MS Mita S Panchal AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 27/10/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that two prohibition offences were registered against him at Eastern Wing Prohibition Station at C.R.No.1688 / 2002 and 1476 / 2003 respectively on 15/06/02 and 19/10/03 respectively. It was also alleged against him that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities. On the strength of the aforesaid two registered offences and unregistered cases, an order of detention was passed against the petitioner.

3. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that two offences were registered, it could not be said that the activities of the petitioner posed a threat to public order. That, therefore, the order of his detention is illegal and it may be quashed and set aside.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP appeared on behalf of the respondents. The learned AGP produces affidavit, which is taken on record. I have heard the learned advocates for the parties and have perused the papers.

5. During the course of arguments, the learned advocate for the petitioner has argued that only two stray prohibition offences have been registered against the petitioner and only two statements of witnesses have been recorded. This could not be said to be a material on the basis of which an order of detention could be passed against the petitioner. So far the statements of witnesses are concerned, undisputedly, the names of those witnesses were not disclosed to the petitioner.

6. The learned AGP contends that u/s.9(2) of the said Act, the detaining authority has a power of privilege to withhold the names of the witnesses from the notice of the petitioner. There is no dispute about the same. At the same time, it is required to be considered that such a representation is required to be considered on appropriate material. Before a right or power of

privilege is claimed u/s.9(2) of the said Act, the detaining authority has to ascertain by appropriate inquiry that there is a genuine fear or apprehension in the minds of the witnesses on account of which they apprehend fear and therefore, their names were required to be kept away from the notice of the petitioner. In the present case, we find that the records do not show that there was credible material before the detaining authority in order to withhold the names of the witnesses from the notice of the petitioner. In absence of such material on record, it cannot be said that the detaining authority was justified in withholding the names of those witnesses.

7. So, on the one hand, with respect to the registered offences, it could not be said that the illegal activities of the petitioner would lead to a threat to public order, and on the other hand, the statements of witnesses were not considered and their names were not disclosed to the petitioner which would amount to a violation of the principle of natural justice. Therefore, on these counts, the order of detention is required to be quashed and set aside.

8. For the foregoing reason, this petition is allowed. The impugned order of detention dated 27/10/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Sunil Balun Tejbahadursing Thakur, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

pravin/